

D I C K S T E I N   S H A P I R O   M O R I N   &   O S H I N S K Y   L L P

2101 L Street NW • Washington, DC 20037-1526

Tel (202) 785-9700 • Fax (202) 887-0689

Writer's Direct Dial: (202) 828-2226

A5697.0455

June 24, 2005

Marlene H. Dortch, Secretary  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, S.W., TW-A325  
Washington, DC 20554

**NOTICE OF WRITTEN**  
**EX PARTE COMMUNICATION**

**Re:    WC Docket No. 05-198**

Dear Ms. Dortch:

On June 23, 2005, and June 24, 2005, respectively, Albert Kramer sent the enclosed e-mails to Renee Crittendon, Terri Natoli, and Erin Boone of the Competition Policy Division, Wireline Competition Bureau, re the proposed transfer of assets from Transtel/Tel America Communications, Inc., *et al.* to UCN, Inc. in the above reference matter.

Respectfully submitted,



Albert H. Kramer

Enclosures

cc:    Renee Crittendon  
      Terri Natoli  
      Erin Boone

1177 Avenue of the Americas • New York, NY 10036-2714

Tel (212) 835-1400 • Fax (212) 997-9880

[www.DicksteinShapiro.com](http://www.DicksteinShapiro.com)

-----Original Message-----

**From:** Kramer, Al  
**Sent:** Thursday, June 23, 2005 9:43 AM  
**To:** 'renee.crittendon@fcc.gov'; 'erin.boone@fcc.gov'; 'Terri.natoli@fcc.gov'  
**Cc:** 'jsm@thglaw.com'; 'sstoll@blackburn-stoll.com'  
**Subject:** WC Dkt. No. 05-198, application for transfer of assets from Transtel/TelAmerica to UCN

Yesterday afternoon, I spoke to Jonathon Marashlian, the attorney for the transferee, UCN, in the above referenced matter. I explained that we, on behalf of APCC Services, had been in to see the staff (you) earlier in the day and discussed our position with you. I explained that you had a preference for a private resolution of the matter and explained that we would drop our opposition if UCN agreed to assume the liability for any dial around compensation that was ultimately determined to be due from TelAmerica or if there were an escrow established to cover any liability that was ultimately determined to exist. He demurred on UCN's willingness to assume the liability and suggested that I needed to talk to TelAmerica about the escrow. I said I would not follow up on the latter since I regarded the latter as futile in light of TelAmerica's past conduct, including refusing to participate in an FCC sponsored informal staff mediation after we had filed an earlier informal complaint. Mr. Marashlian said he would communicate the substance of his and my discussion to his client.

Albert H. Kramer  
Dickstein Shapiro Morin & Oshinsky  
2101 L Street, NW  
Washington, D.C. 20037  
(202) 828-2226  
(202) 887-0689

-----Original Message-----

**From:** Kramer, Al  
**Sent:** Friday, June 24, 2005 10:31 AM  
**To:** Terri.Natoli@fcc.gov; erin.boone@fcc.gov; renee.crittendon@fcc.gov; jttroup@mcguirewoods.com; Aldrich, Robert; Kramer, Al  
**Subject:** WC Docket No. 05-198

This e-mail responds to one of the points in the letter of June 23, 2005 from John Marashlian to the Commission's secretary in the above referenced matter. (The letter contains too little information regarding the other matters discussed in the telephone conversation to respond.)

As to the dispersion of assets, there is no doubt that the transaction will give TelAmerica more than enough assets to satisfy any liability that would result from the successful prosecution of the dial around claims. That of course is *not* at all the issue. The issue, to be blunt, is whether any of that money and value will be left in TelAmerica to satisfy any judgment that may be rendered by the Commission as a result of TelAmerica's violations of the Act and the Commission's regulations. Mr. Marashlian's letter does not speak to that issue; nor could he. UCN will have no control over the disposition of the money paid to TelAmerica, and that money will likely be long gone --distributed to the owners--before the Commission gets around to rendering its judgment as to the liability of TelAmerica. The transfer application explains that consummation of this "transaction will permit the Transtel Companies [which include TelAmerica] to exit the telecommunications services business." Application at 5. TelAmerica will have succeeded in using its Commission granted authority to be a carrier to operate in violation of the Commission's rules and then walk away with the sale proceeds without paying for its rule violations, a result clearly at odds with the public interest. Once a judgment is rendered, there will be no assets to satisfy it.

APCC Services has proposed a solution that allows the alleged public interest benefits of the transaction to be realized, but that also vindicates the Commission's and the public interest in ensuring the integrity of the Commission's Rules and vindicates the Section 276 mandate for the Commission to "promote the widespread deployment of payphone service to the benefit of the general public." In the face of this public interest proposal, the Commission is met, on the one hand, by the recalcitrance of the transferee, UCN, in asserting its private interest in acquiring the assets without assuming responsibility for the liability and, on the other hand, the protection of its private interests by the transferor, Transtel, et.al. by failing to come forward with any solution other than take the money and run. In these circumstances, the Commission should condition grant of the application on either the parties to the transaction agreeing to escrow an amount to satisfy any liability or on the transferee's assuming the liability for any Commission determination that the money is owed. At a minimum, the Commission must remove this matter from streamlined processing while it considers these issues.

Thank you very much for your consideration.

Albert H. Kramer  
Dickstein Shapiro Morin & Oshinsky  
2101 L Street, NW  
Washington, D.C. 20037  
(202) 828-2226  
(202) 887-0689